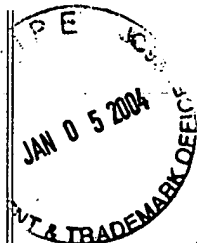


Image



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
)  
Paul HABERMANN et al. ) Group Art Unit: 1645  
)  
Serial No.: 10/076,634 ) Examiner: Patricia Ann Duffy  
)  
Filed: February 19, 2002 )  
)  
For: NUCLEIC ACIDS, PROTEINS, )  
AND PROCESSES FOR )  
PRODUCING PROTEINS SUCH )  
AS FUSION PROTEINS FOR THE )  
SECRETION OF A PROTEIN OF )  
INTEREST INTO BACTERIAL )  
SUPERNATANTS )  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In a restriction requirement dated December 4, 2003, the Examiner required restriction under 35 U.S.C. § 121 between Group I (claims 1-6 and 9-23 drawn to a nucleic acid, plasmid, host cell, and method of use) and Group II (claims 7 and 8 drawn to a fusion polypeptide). Applicants provisionally elect to prosecute Group I, with traverse.

Applicants respectfully traverse the restriction requirement for the reason that the Examiner has not shown there to be a serious burden to examine the entirety of the subject matter together. In order for a restriction requirement to be proper, "[t]here must be a serious burden on the examiner...." MPEP § 803. Thus, although the Examiner has argued that the inventions are distinct, this is not a sufficient basis by itself to support a restriction requirement. Applicants respectfully submit that there is no serious

burden to continue to examine all of the claims together without a restriction requirement.

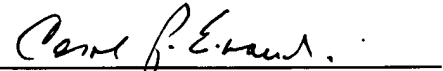
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: January 5, 2004

By: \_\_\_\_\_



Carol P. Einaudi  
Reg. No. 32,220

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